

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MICHAEL YOUNG,

Plaintiff,

v.

OPINION AND ORDER

13-cv-689-wmc

BUFFALO COUNTY SHERIFF
DEPARTMENT and DEPUTY
LOGAN OLSON,

Defendants.

In this proposed action, plaintiff Michael Young alleges that defendants the Buffalo County Sheriff Department and Deputy Logan Olson violated his constitutional rights when Olson entered private property out of his jurisdiction and accused Young of crimes he did not commit. Plaintiff asked for leave to proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915. From the financial affidavit provided to the court, it concluded that plaintiff was unable to prepay the fee for filing this lawsuit. The next step is determining whether plaintiff's proposed action is (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Because Young has failed to state a claim on which relief may be granted, the court will deny plaintiff leave to proceed and dismiss this action.

ALLEGATIONS OF FACT

In addressing any pro se litigant's complaint, the court must read the allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this screening order, the court assumes these probative facts based on the allegations in his complaint:

- On August 28, 2013, Young was “doing some volunteer cleaning work at a building in Mondovi, Wisconsin at a private building.” (Compl. (dkt. #1) ¶ 1.) The owners of the building previously had given Young permission to volunteer and clean the property.
- Deputy Olson came onto the property without having been called by the property owners or by Young. It appears Olson entered the building where Young was cleaning through a partially opened door. (*Id.* at ¶ 3 (alleging that the door was “part way open”).)
- Young further alleges that Olson told Young that he looked suspicious and demanded identification under threat of arrest.
- Young also contends that Olson was “out of his legal jurisdiction” at this time. (*Id.* at ¶ 1.)

OPINION

As best as the court can discern, plaintiff seeks to bring a claim against Olson and the Sheriff's Department pursuant to 42 U.S.C. § 1983 based on alleged constitutional violations caused by Olson's acts. Young appears to challenge (1) Olson's entering of a private building; (2) his demand that Young produce identification; and (3) Olson's presence “outside of his legal jurisdiction.”

As for challenging Olson's entering of a “private building,” Young offers little detail about the premises in Mondovi where he was cleaning on a volunteer basis. The building was owned by someone other than Young, and it is not clear whether it was a commercial building or otherwise open to the public. Regardless, Young would have to

have a “subjective expectation of privacy that society recognizes as reasonable” in order to state an unlawful search claim under the Fourth Amendment. *Kyllo v. United States*, 533 U.S. 27, 33 (2001) (citing *Katz v. United States*, 389 U.S. 347, 361 (1967)). Young fails to allege that he had a reasonable expectation of privacy, and the court cannot infer such an allegation from the limited detailed provided in his complaint.

As for Young’s challenge to Olson’s demand that he produce identification, the complaint does not allege a search or seizure. In that respect, “[a]sking questions is an essential part of police investigations.” *Hübel v. Sixth Judicial Dist. Court of Nevada*, 542 U.S. 177, 185 (2004). Thus, “[i]n the ordinary course a police officer is free to ask a person for identification without implicating the Fourth Amendment.” *Id.* “[A] seizure does not occur when the police approach people on the street and pose questions, ask for identification, or request consent to search their belongings -- provided that cooperation is not induced by coercive means.” *Terry v. Richardson*, 346 F.3d 781, 785 (7th Cir. 2003). Rather, “Fourth Amendment protections arise only when a reasonable person would not feel free to leave the police presence, or if leaving is impractical, when a reasonable person would not feel free to ‘decline the officers’ requests or otherwise terminate the encounter.” *Id.* (quoting *Florida v. Bostick*, 501 U.S. 429, 436 (1991)); *see also Jones v. Clark*, 630 F.3d 677, 682-83 (7th Cir. 2011) (observing that an officer does not violate the Constitution by engaging in consensual questioning).

Even if Young felt he was not free to leave under all the circumstances of being found in a private building without obvious permission, the court can infer from the allegations that Olson’s request for identification was based on a reasonable suspicion

that Young was trespassing. *See Terry v. Ohio*, 392 U.S. 1, 30 (1968) (holding that a police officer may, for example, conduct “a brief, investigatory stop” and pat-down or frisk a person for the officer’s own protection “when the officer has a reasonable, articulable suspicion that criminal activity is afoot”). As such, the officer could at least inquire.

Finally, Young also takes issue with Olson operating outside of his jurisdiction. Contrary to Young’s allegations, however, Mondovi appears to be within Buffalo County. *See* Google Maps, <http://www.maps.google.com> (last visited March 3, 2014) (showing Mondavi within Buffalo County, Wisconsin); *see also* “Mondovi, Wisconsin,” Wikipedia, http://en.wikipedia.org/wiki/Mondovi,_Wisconsin (last visited March 3, 2014) (describing Mondovi as a city in Buffalo County). Even if Young’s claim that an officer cannot act outside of his jurisdiction had legal merit, the facts alleged do not support such a claim.

ORDER

IT IS ORDERED that:

- 1) plaintiff Michael Young’s complaint is DISMISSED for his failure to state a claim; and
- 2) the clerk’s office is directed to close this case.

Entered this 7th day of April, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge